

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DENNIS L. SMITH,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 98-639-JJF
)	
EX-POLICE CHIEF GUY D.)	
BAYNARD,)	
)	
Defendant.)	

**DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF HIS MOTION TO STRIKE**

Defendant moves to strike Plaintiff Dennis Smith's Motion for Summary Judgment (D. I. 127) for failure to comply with the Court's Orders of June 28, 2000 (D.I. 49) and May 5, 2003 (D.I. 69). In support of his Motion, defendant states as follows:

1. On June 28, 2000 the Court set a deadline of October 6, 2004 for the filing of dispositive motions. (D.I. 49) On October 5, 2000 defendants moved for summary judgment as to all claims against all defendants, except for the 42 U.S.C. § 1983 false arrest claim against defendant Guy D. Baynard. (D.I. 57).

2. On May 5, 2003 the Court permitted the parties to file or renew dispositive motions on or before May 9, 2003. (D.I. 69).

3. On February 5, 2004 Defendants' Motion for Summary Judgment was granted, with the exception of plaintiff's claims for false arrest against defendant Guy Baynard. (D.I. 88).

4. Plaintiff filed a Motion for Summary Judgment (for the first time) on May 4, 2007, six days before the second Pre-Trial Conference and nearly four years after the summary judgment deadline set by the Court.

WHEREFORE defendant Guy D. Barnard requests that plaintiff's Motion for Summary Judgment be stricken for failure to comply with the Court's orders.

AKIN & HERRON, P.A.

/s/ Bruce C. Herron
Bruce C. Herron
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Dated: May 8, 2007

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BAYNARD,)	
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Defendants.)	

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 8th day of May, 2007, a copy of (1) DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF AND (2) DEFENDANT'S MOTION FOR LEAVE TO FILE A MEMORANDUM OF POINTS AND AUTHORITIES IN LIEU OF AN OPENING BRIEF were served via Lexis/Nexis File and mailed first class upon the following party:

Mr. Dennis Lee Smith
P.O. Box 311
Selbyville, DE 19975

AKIN & HERRON, P.A.

/s/ Bruce C. Herron
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